

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 06-0353
RESPONSIBLE OFFICER
SALES AND WITHHOLDING TAX
For Tax Period 1995 through May, 2006

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ISSUE

I. Sales and Withholding Tax -Responsible Officer Liability

Authority: IC § 6-2.5-9-3 IC 6-3-4-8 (g), IC § 6-8.1-5-1(b).

The taxpayer protests the assessment of corporate sales and withholding taxes against her as a responsible officer.

Statement of Facts

The taxpayer was associated with a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period 1996 through May, 2006. The Indiana Department of Revenue assessed the outstanding corporate withholding taxes, sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and agreed that the decision contained within this Letter of Findings be made based upon the documentation in the file. This Letter of Findings results.

I. Sales and Withholding Tax -Responsible Officer Liability

Discussion

The proposed sales tax liability was issued under authority of IC § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC § 6-3-4-8(g), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The taxpayer provided substantial documentation indicating that she had never been responsible for the payment of the corporation’s trust taxes. Specifically, she provided substantial documentation that she was not responsible for the remittance to Indiana of the corporation’s sales and withholding tax payments from 1996 through May, 2006.

Finding

The taxpayer’s protest is sustained.